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HAROLD B. WILLEY, C

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 151

EVA SIMPSON, BETTY BURRELL AND GRACE PROUDFOOT, INDIVIDUALLY, AND AS TAXPAYERS OF THE CITY OF LOS ANGELES, AND ON BEHALF OF ALL OTHER TAXPAYERS OF THE CITY OF LOS ANGELES, AND FRANCES STANCLIFF, *Appellants,*

vs.

THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, GEORGE M. UHL, RICHARD F. BONNER, COLLEGE OF MEDICAL EVANGELISTS, A NON-PROFIT CORPORATION, MEDICAL RESEARCH ASSOCIATION OF CALIFORNIA, A NON-PROFIT CORPORATION, CEDARS OF LEBANON HOSPITAL, A NON-PROFIT CORPORATION, HARRY GOLDBLATT, M. D., INDIVIDUALLY AND AS A TAXPAYER OF THE CITY OF LOS ANGELES, AND UNIVERSITY OF SOUTHERN CALIFORNIA, A NON-PROFIT ASSOCIATION, *Appellees.*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

STATEMENT AGAINST JURISDICTION ON APPEAL AND MOTION TO DISMISS OR AFFIRM

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May It Please the Court:

The appellees respectfully show the following in opposition to the appellants' assertion of the jurisdiction of the

Supreme Court of the United States, and in support of the appellees' motion to dismiss or affirm:

I

The Facts Presented

By detailed provisions of the Municipal Code of the City of Los Angeles, one harboring a dog within the city limits must secure a permit or license: the only exceptions are for transients, for owners of mere puppies, and for operators of kennels otherwise licensed. A permit to harbor a dog is evidenced by a metal license tag which must be securely fastened to the dog's collar whenever it is off its owner's premises.

No one may permit a dog to run at large within the city; every dog must either be confined upon its owner's premises or be restrained by a leash.

Animals may be impounded by the City Department of Animal Regulation for various reasons, such as that they are objects of abuse or neglect, or are dangerously infected with disease, or that they are found wandering at large. There are various provisions for the disposition of impounded animals: they may be reclaimed by an owner, they may be sold, they may be destroyed, they may be delivered to the armed forces or they may be delivered to research institutions for purposes beneficial to mankind.

The latter provision for the disposition of unclaimed impounded animals was added to the Municipal Code by decision of the electors of the city upon referendum. It is of this provision alone that the appellants complain.

The appellees' demurrer to the appellants' complaint in the Superior Court of the State of California was sustained with leave to amend. The appellants failed to amend, and judgment for the appellees was entered. That judgment was affirmed (*Simpson* v. *City of Los Angeles*, 40 A.C. 275).

The facts presented are therefore those which appear in the complaint, as construed and applied by the Supreme Court of California in its opinion affirming the judgment; and since the appellants failed, with leave, to enlarge upon those facts by amendment, they are in no position here to seek an enlargement by surmise or conjecture. All of the intendments were for the ordinance in the state courts, all intendments now are for the judgment.

The appellants seek to raise various questions asserted to be federal in their jurisdictional statement. Only one of these has even a color of apparent substance—the claim that the appellants are being deprived of property without due process of law.

II

Argument

A. Upon the facts presented the appellants have no standing to raise this or any other question before this Court.

B. Under prior decisions of this Court as to the nature of property rights in dogs, no substantial federal question could be made to appear here.

C. As the ordinance is construed and applied by the opinion of the Supreme Court of California, due process fully appears.

D. The appellants have not complied with the rules of this Court and the purported appeal is therefore irregular and invalid.

Point A. None of the appellants is the owner of a dog in the possession of any of the respondents. The sole basis for their standing to attack the ordinance in question, as stated in the opinion of the Supreme Court of California (*Simpson* v. *City of Los Angeles*, 40 A.C. 275, 280, 281) is that three of them are resident citizens and taxpayers of

the city and that as such they were entitled to sue to prevent alleged illegal expenditures in connection with the administration of the ordinance. Such is purely a state question and the decision of the state court thereon forecloses any inquiry here.

McCandless v. *Pratt*, 211 U. S. 437, 441-445 53 L. Ed. 271, 273, 274.

See also:

United Public Workers v. *Mitchell*, 330 U. S. 75, 91 L. Ed. 754, 765-768;

Stark v. *Wickard*, 321 U. S. 288, 290, 304 88 L. Ed. 733, 737, 745;

Coleman v. *Miller*, 307 U. S. 433, 438-442, 83 L. Ed. 1385, 1388-1391;

Frothingham v. *Mellon*, 262 U. S. 447, 483-489, 67 L. Ed. 1078, 1083-1085.

cf.: *Fairchild* v. *Hughes*, 258 U. S. 126, 129, 130; 66 L. Ed. 499, 504;

DeSaussure v. *Gaillard*, 127 U. S. 216, 232-234; 32 L. Ed. 125, 131, 132.

Point B. Under prior decisions of this Court as to the nature of property rights in dogs, no substantial federal question could be made to appear here. Property rights in dogs are *sui generis* and are peculiarly subject to the exercise of the police power. Consequently, without question of constitutional conflict, state or municipal legislation under the police power may prohibit or regulate the keeping of dogs, may require dogs to be restrained, as directed, and may seize and destroy or dispose of dogs which are not licensed, kept or restrained as required.

Nicchia v. *New York*, 254 U. S. 228, 230, 231, 65 L. Ed. 235, 238;

Sentell v. *New Orleans & C. R. Co.*, 166 U. S. 698, 700-706; 41 L. Ed. 1169;

Harrington v. *California*, 314 U. S. 582, 86 L. Ed. 471.

And see:

State v. *Moresi*, 209 La. 180, 24 So. 2d 370;
N. Y. State Voters League, etc. v. *Hilleboe*, 202 Misc. 687; 114 N. Y. S. 2d 805.

Point C. As the ordinance is construed and applied by the opinion of the Supreme Court of California, due process fully appears in any event. Contrary to the appellants' entreaties the Supreme Court of California construed the contested subsection (53.11(h)) of the Los Angeles Municipal Code with provisions of the same section and related sections (sections 53.00 to 53.37). Thus construed the ordinance requires, before an unclaimed impounded dog is delivered for research, (1) that the owner be notified within one day after the dog is impounded, and (2) that the dog be thereafter kept in the pound for five days, during which its owner may claim it (p. 284).

The dissenting Justice of the Supreme Court of California took issue with such construction, contending that the ordinance ought not to be construed to require such notice, and that without such construction it appeared unconstitutional. Such a question of construction is for the state court; the appellants invite this Court to agree with the state dissenter and then to strike down the ordinance for asserted inconsistency with the Fourteenth Amendment.

Oklahoma Tax Commission v. *Texas Co.*, 336 U. S. 342, 351; 93 L. Ed. 731;
Winters v. *New York*, 333 U. S. 507, 514, 92 L. Ed. 840, 849.

Point D. The appellants have not complied with the rules of this Court and the purported appeal is therefore irregular and invalid. The opinion of the Supreme Court of California was filed February 20, 1953; rehearing was denied on March 19, 1953. Appeal was allowed by Mr.

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Justice Douglas on May 13, 1953, upon a petition filed with this Court, but copies of neither the order nor the petition have been served upon the appellees. No citation has been served upon the appellees under Rule 10, nor has any assignment of errors or statement re Rule 12(3) been served under Rule 10 and Rule 12, nor has any notice, record, brief or petition for review on certiorari been served upon the appellees under Rule 38.

Since the appellants have not complied with the rules of this Court, their purported appeal is irregular and should be dismissed.

Conclusion

Upon the foregoing the appellees respectfully move that the within appeal be dismissed or that the judgment of the Supreme Court of the State of California be affirmed.

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